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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/335,377 06/17/99 PLATE

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EXAMINER

CULBRETH, E

ART UNIT	PAPER NUMBER
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3611

DATE MAILED:

09/08/00

Handwritten mark: 4

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/335,377

Applicant(s)
Plate et al

Examiner
Eric Culbreth

Group Art Unit
3611



☒ Responsive to communication(s) filed on Oct 9, 1999

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-33 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☒ Claim(s) 1-19 is/are allowed.

☒ Claim(s) 20-33 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

Art Unit: 3611

DETAILED ACTION

1. The original patent, or an affidavit or declaration as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 26-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 26 and 32, it is inaccurate to recite the axle as "shiftable" (the axle pivots in the disclosure; shifting connotes translation).

4. The application filed 6/17/99 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: There is no support in the original specification (claim 21) for a sensor sensing when the frame is tilted by more than the predetermined angle. Neither is there support for claim 25 (the sensor being an inclination switch on the frame and connected to the cylinder). There is no support in the original specification for claims 27-28.

Art Unit: 3611

Applicant is required to cancel the new matter in the reply to this Office action.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 20-21 as best understood are rejected under 35 U.S.C. 102(b) as being anticipated by Laverda.

Laverda discloses a vehicle comprising a body 1 with appendage or frame 1a as broadly recited (i.e., the vehicle body is supported on the appendage), axle 3 connected to the frame for relative movement and a system (valves 14, 18) for locking the axle relative to the frame when the frame is tilted more than a predetermined angle (relative to the axle; see column 3, lines 41-51, where automatic leveling ceases and the hydraulic circuit becomes inoperative when some maximum angle is reached)(claim 20).

Regarding claim 21, a limit switch 34 senses when the frame is tilted by more than a maximum or predetermined angle.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3611

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 22-25 as best understood are rejected under 35 U.S.C. 103(a) as being unpatentable over Fought in view of Laverda.

Fought discloses a boom 34 mounted on frame or chassis 12 and with a hydraulic system 39 for elevating the boom. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Fought to include an axle locking system such as that taught by Laverda in order to automatically level the device while stopping leveling at a maximum safe angle. Regarding claim 24, the pistons of cylinders 58 and 60 in Fought are connected to frame 50 of chassis 12, and attaching a cylinder 58 or 60 to frame 50 instead of the piston is an obvious reversal of parts. At any rate, in the combination Laverda teaches cylinders 5, 5' attached to brackets 4, 4' of the vehicle frame.

Art Unit: 3611

Regarding claim 25, as Laverda's limit switches 34 in the combination are adjacent the axle 3 in Figure 3, they would be on Fought's lower frame, measuring inclination as broadly recited and operably connected to the hydraulic cylinders.

10. Claims 1-19 are allowed.


11. Claims 26 and 32 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

12. Claims 27-31 and 33 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims, and also to overcome new matter issues.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Culbreth whose telephone number is (703) 308-0360.

ec

September 4, 2000


ERIC CULBRETH
PRIMARY EXAMINER

9/5/00